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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF **ARIZONA PUBLIC SERVICE COMPANY** FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR **RATEMAKING** PURPOSES, TO FIX A JUST AND REASONABLE **RATE** OF RETURN THEREON, [AND] TO APPROVE **RATE SCHEDULES** DESIGNED TO DEVELOP SUCH RETURN.	(Teena Jibilian, Hearing Officer) **DOCKET NO. E-01345A-16-0036** **INTERVENOR GAYER'S POST-HEARING BRIEF**
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE COMPANY.	**DOCKET NO. E-01345A-16-0123**

Richard Gayer, an Intervenor herein, hereby submits his Post-Hearing Brief pursuant to oral instructions from Judge Jibilian stated on two different days during the Hearings.

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INTRODUCTION

Definitions: "APS", "you" and "your" refer to the Arizona Public Service Company, the utility involved in this rate case. "Transcript(s)" refers to the Coash and Coash Court Reporter's transcripts of each day of the Hearings, as posted on the APS Extranet in read-only format; citations are to "page:line-line". The "Commission" or "ACC" or "A.C.C." means the Arizona Corporation Commission. "ARS" or "A.R.S." means the Arizona Revised Statutes.

TOU means Time-of-Use, "Demand" means a customer's load measured in kilowatts, and Volumetric Usage means a customer's energy consumption measured in kilowatt-hours. "Digital Meter" means a meter that lacks any electrical, electronic or radio wave means of communication (transmitting or receiving) and must be read by a person who is sufficiently near the meter to read it with (say) binoculars. A Digital Meter also lacks internal contacts that can or may be used to disconnect a customer's power. "Smart Meters" means AMI meters. The proposed rate known as "R-XS" is for customers who on average consume no more than 600 kilowatt-hours per month for a total of no more than 7,200 kilowatt-hours per year.

It is agreed that APS has about 1.2 million customers, and that number shall be treated as an exact number for all relevant calculations herein.

Gayer submits no comments on "Revenue Requirements"; he confines his arguments here to rate design and to issues that do not involve either revenue requirements nor rate design. The Table of Contents comprises his Summary of the Argument

ARGUMENT

I. THE SETTLEMENT PROCESS WAS A FARCE AND A SHAM.

More importantly, it was a gross and blatant denial of procedural due process

1.1 *Rule 408 Does Not Bar All Uses of Settlement Discussions.*

Rule 408 of the Arizona Rules of Evidence (A.R.E.) does not bar the use of settlement discussions when offered for a relevant purpose other than proving the validity of a claim or its amount. *Bradshaw v. State Farm Mutual Auto Insurance Co.*, 157 Ariz. 411, 420 (1988).

APS obtained an agreement to secrecy of the contents of the settlement discussions by fraudulent use of Rule 408, which forbids only the use of anything said or done during discussions in any subsequent judicial or administrative proceeding. It says nothing about confidentiality or secrecy, so that APS and Intervenors may disclose settlement events to the media, their friends, on Facebook, or any other public or private forum. That is especially true at this time, since all Hearings are over and no harm whatsoever to the overall process can result from settlement disclosures now or could have in the past.

Therefore, APS's reliance on Rule 408 is dubious at best and fraudulent at worst. Since A.R.S. section 44-1521 et seq. applies to APS, the entire settlement process and resulting agreement (APS 29) should be set aside and this entire rate case should be litigated *ab initio*. Section 44-1522 is set forth below under 3.3, *post*. Subdivision (A) expressly provides that fraudulent conduct is unlawful "whether or not any person has in fact been misled, deceived or damaged thereby".

1.2 *The Private Right of Action under § 44-1522 Should Include Injunctive Relief.*

While it is clear that section 44-1522 provides any injured person with a private right of action for fraud damages against any business, it is not similarly clear that a private person may obtain an injunction against the offending business (here, APS) under the Consumer Fraud Act. Section 44-1528 gives the Attorney General such power, but nothing in the Act limits that power to him.

The remedial character and breadth of the Act is emphasized in *People ex rel. Babbitt (AG)*, 127 Ariz. 160, 164 (Ariz. App. 1980). The core of the Act, section 1522(A), defines "unlawful practice" as set forth below in 3.3, *post*. "The terms of this provision are obviously quite broad and are not subject to restrictive interpretation because the Act is generally to be considered remedial in nature. *Sellinger v. Freeway Mobile Home Sales, Inc.*, 110 Ariz. 573, 521 P.2d 1119 (1974). The Act's most important remedial provision, section 44-1528(A),

permits the attorney general to seek an injunction prohibiting such 'unlawful practices' and seek restoration of monies or property obtained by such practices."

Gayer submits that the Court and the Commission should view the injunctive provisions of section 44-1528 as applicable to private citizens seeking fair treatment in rate cases that routinely come before the Commission. With an injunction in hand, private citizens will at last be able to obtain a fair hearing on the issues.

1.3 *There is No Place in Rate Cases for Private Settlement Discussions.*

There is no place in rate cases for private and secret settlement discussions between APS and selected representatives of private corporations and organizations in which a Settlement Agreement (APS 29) becomes a steamroller against dissent and disagreement. Consider the testimony of Witness Bordenkircher on the power of that Agreement. "I will simply reiterate that we support the comprehensive settlement agreement" (627:13-14). He later admits its absolute and restrictive power regarding possible bill estimation for non-AMI customers: "So yes, it is true that APS opposes using bill estimation. But I also believe that that point is rendered rather ***moot*** because, again, the agreed upon ***settlement agreement dictates*** the structure of the opt-out program" for customers who object to AMI meters (630:18-22. emp. added). Since the Settlement Agreement actually "dictates" the structure of essentially everything, the hearing process is nothing more than a farce and a sham.

The ROO that results from the Hearings is usually accepted by the Commission without significant debate, so that important issues in rate cases seldom receive a fair evaluation. The time has come to end a settlement process that is imbued with an odor of mendacity so characteristic of back room deals, and conduct all rate case proceedings openly in public, both now and in the future. The Constitution applies because the settlement discussions were conducted and managed by the Staff of the A.C.C., a governmental entity.

II. THE SETTLEMENT PROCESS AND THE HEARINGS TREATED NON-AMI CUSTOMERS AS NON-PERSONS TO BE PUNISHED FOR OPPOSING AMI.

2.0 APS opposes ***all*** of the following points; the signers of the Settlement Agreement (APS 29) have expressly promised to go along with APS and not oppose any provision of that Agreement. (Settlement Agreement at ¶ 40.6: "if the Commission adopts an order approving all material terms of the Agreement, the Signing Parties will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.)

2.1 *There Should Be No Additional Charge for Reading Non-AMI Meters; the Cost of Such Readings Should be Spread Among All 1.2 Million APS Customers.*

APS states that the cost of reading a non-AMI meter is $15 per month, Bordenkircher testified that there are 16,568 such customers (APS Exhibit 9 at page 9:20-21), and it is agreed by all parties that there are 1.2 Million APS customers. See Gayer Exhibit 17. The resulting additional meter reading cost for each customer is only 20.7 cents per month. Nonetheless, APS strongly objects to any such cost spreading in any amount, apparently for no reason except that it has the power to do so. Gayer respectfully requests that the Commission provide some protection to customers from greedy APS bullies. (For a good example of an APS bully in action, please read the live testimony of Witness Bordenkircher from page 639:12 through page 643:7, discussed further under 2.4, *post*.)

But APS strongly favors time-based rates such as TOU and Demand, and so is exerting any pressure that will be approved by the Commission to force non-AMI customers to accept smart meters. Gayer submits that the Commission should approve the foregoing cost spreading, thereby protecting non-AMI customers from the burden of unnecessary charges.

Gayer also submits that treating similarly situated customers – here, residential – in different ways violates ARS section 40-334. That section on discrimination by public utilities applies to APS [emp.added]: "(A) A public service corporation shall not, as to rates, ***charges***, service, facilities or in any other respect, make or grant any preference or advantage to any person or ***subject any person to any prejudice or disadvantage***. (B) No public service corporation shall establish or maintain ***any unreasonable difference as to rates, charges***, service, facilities or in any other respect, either between localities or between ***classes of service***."

There is no doubt that APS is subjecting its non-AMI customers to a major disadvantage; $60 additional per year is a significant sum to many low income customers. (Compare Coffman testimony at 54:22 to 55:18 on concerns with a high Basic Service Charge.) The next issue is whether non-AMI customers constitute a separate residential class. If they do, then the additional $60 per year must be rejected because it is unreasonable in view of the *de minimis* actual cost of 20.7 cents per month if spread among all APS customers.

2.2 *APS Should Allow Non-AMI Customers to Submit Monthly Self-Readings, Thereby Reducing the Number of In-Person Readings*

APS has allowed some of its customers to submit monthly self-readings for years. See Arizona Administrative Code section R14-2-209(A) on "Company or Customer Meter Reading", especially subdivisions 1 and 3: "1. Each utility, billing entity, or Meter Reading Service Provider may at its discretion allow for customer reading of meters." "3. Where a customer reads his own meter, the utility or Meter Reading Service Provider will read the customer's meter at least once every six months."

Gayer attempted to obtain evidence on this subject at the Hearings, but Witness Miessner told him to ask Bordenkircher (517:15-21), who said later that he did not know (645:17-20).

2.3 *APS Should Apply Bill Estimation to Non-AMI Customers, Thereby Reducing the Number of In-Person Readings of Such Meters*

In Decision 75752 (at ¶ 36) in Docket 15-0385 on Bill Estimation, the Commissioners expressly invited Gayer by name to intervene in this docket (16-0036) to present his arguments in favor of bill estimation for non-AMI customers. "However, Staff agrees with APS 's interpretation of Decision No. 75047 that directed APS to include in its next rate case the topics of AMI opt-out and the meter reading for non-standard meters . Therefore , Staff concludes that Mr. Gayer's concerns are best addressed in the current APS rate case Docket No. E-01345A-16-0036 rather than in this docket which seeks to modify the bill estimation tariff. Mr. Gayer could still intervene in the APS rate case if he desires to have input on these issues."

So far, Gayer's concerns have been flatly rejected by APS and its followers in the Settlement Agreement; they conclude that bill estimation has no application to regular periodic

readings, but only to situations where a meter cannot be read. Witness Bordenkircher commented that Bill Estimation was not in the Settlement Agreement (630:1-6) and that in any event, APS opposes Bill Estimation for non-AMI customers (630:16-19).

Gayer respectfully requests that the Commission not throw him under the bus after expressly inviting him to participate in this Docket regarding bill estimation.

2.4 *APS Should Not Require Physical Access to Non-AMI Customers' Meters if Their Meters Can Be Read From A Convenient Location Outside of Their Property.*

APS witness Bordenkircher testified that APS is entitled to such access under the Tariff, so that no exceptions will be made. Period! Bordenkircher at 639:12 to 640:9. No exceptions will be made even if a given customer's meter has been read for over 13 years using binoculars from an alley conveniently located outside of the customer's property or that providing tactile access to that customer's meter would substantially inconvenience the customer or impair his or her security (by leaving a gate open for access by APS). *Id.*, at 640:10 to 641:2.

This is just another example of APS using its substantial power – power provided by the Commission – to bully its customers into submission to its wishes. Gayer submits that the Commission should put an end to such abuse in this situation, one that is very important to some customers but insignificant to APS. Is courtesy unknown to APS employees like Scott Bordenkircher, or is it just the power of the Settlement Agreement that is controlling all signers? It is the latter. He has recognized that it is the absolute power of the Agreement that controls essentially everything: "the agreed upon settlement agreement ***dictates*** the structure of the opt-out program" (630:20-21, emp. added); Gayer submits that the Agreement effectively "dictates" the structure of the ROO as well as the Decision and Order of the Commission.

III. NEW CUSTOMERS SHOULD NOT BE FORCED ONTO A TIME-BASED RATE FOR 90 DAYS OR ANY OTHER PERIOD OF TIME; THEY SHOULD BE ALLOWED TO CHOOSE FROM ANY RESIDENTIAL RATE, EVEN R-XS IF QUALIFIED

3.1 *APS's Proposed Treatment of New Customers Constitutes Unlawful Discrimination.*

A.R.S. section 40-334 on discrimination by public utilities applies to APS, as quoted above under 2.1, *ante*. Preliminarily, it appears that the proposed rates for new customers that impose 90-days on a time based rate violates both subdivisions (A) and (B) of section 40-334. First, the proposed rates do subject "any person [any new customer] to any prejudice or disadvantage", since the forced time based rate is certainly a disadvantage. Second, the forced time-based rates do "maintain an unreasonable difference between as to rates ... or ***in any other respect*** between classes of service" emp. add), where the class here is "new customers".

If the proposed rates at issue here are not *per se* violations of section 40-334, then a lack of adequate notice regarding the additional options available to new customers after the expiration of the 90-day period certainly does violate subdivision (A) as to "any prejudice or disadvantage".

Judicial decisions on 40-334 are few, and published decisions thereon are even fewer. However, *Trico Electric Cooperative v. Senner* (member, A.C.C.), 92 Ariz. 373 (Ariz. 1962) and *Marco Crane and Rigging v. A.C.C.*, 155 Ariz. 292 (Ariz. App. 1987) are helpful.

In *Trico* at page 386, the Supreme Court, after citing Article 15, Section 12 of the Arizona Constitution and A.R.S. section 40-334, stated that "[a] public service corporation is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service. It must be equal in its dealings with all. It must treat the members of the general public alike." (Internal quotes omitted.) Accord, *Marco Crane* at page 297: "A public service corporation must treat all similarly situated customers alike. It cannot extend a privilege to one and refuse the same privilege to another." The same applies to the disadvantages to which APS proposes to subject its new customers, even those who have been long-term customers at a different address.

Therefore, APS's request to require all new customers to suffer on a time-based rate should be soundly rejected as unlawful.

3.2 *APS's Proposed Treatment of New Customers Violates Their Due Process Rights.*

Basic due process requires that "new customers" (as defined in the Settlement Agreement or elsewhere) receive adequate notice of their options that begin after the requisite 90-days on a

time based rate, such as Time-of-Use or TOU with a demand charge. Such notice must be received by new customers sufficiently before the 90-days expire, as stated above.

The issuance of a Decision by the Arizona Corporation Commission ("A.C.C.") or even the issuance by an Administrative Law Judge of a ROO would violate the due process guarantees of the Constitutions of both the United States and Arizona regarding fair notice. (Constitutions apply to all governmental actions.) Opinions from the United States Supreme Court on this issue are legion, but a few cases will suffice here. *Jones v. Flowers*, 547 U.S. 220 at 226 (2006) observes that "we have stated that due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' *Mullane*, 339 U. S., at 314. Notice is "constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent." *Id.,* at 226. Finally, "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it, 339 U. S., at 315" (internal quotes omitted). *Id.*, at 229.

In re Gault, 387 U.S. 1, 33 (1967) states that "[n]otice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded [,]." "Due process of law requires notice of the sort we have described -- that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding." *Ibid.*

Due process principles also apply to APS because it is a regulated public utility under the laws of the State of Arizona; that is, APS is a quasi- governmental entity. Note also that any approval by the Arizona Corporation Commission of an APS policy that violates its customers' due process rights, whether expressed in a Commission's Decision or done *sub silencio*, constitutes a Constitutional due process violation.

3.3 *APS's Proposed Treatment of New Customers Constitutes Consumer Fraud.*

Failure by APS to provide such notice would constitute a form of Consumer Fraud under Ariona Revised Statutes ("ARS") sections 44-1521, et seq. The Arizona Consumer Fraud Act, A.R.S. section 44-1522 (A) provides that "The act, use or employment by any person of any

deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." There is no need to prove actual misleading, deception or damage. Note carefully that "concealment, suppression or ***omission*** of any material fact" [emp. added] are included as forms of fraud.

Compare the simplicity of this law with the additional elements of common law fraud. "Actionable fraud requires a concurrence of all nine elements of fraud. *Nielson v. Flashberg,* 101 Ariz. 335, 419 P.2d 514 (1966). The requisite elements are: (1) A representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted upon by and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; and (9) his consequent and proximate injury." *Schmidt v. Mel Clayton Ford*, 124 Ariz. 65, 67 (Ariz. App. 1979). Most significantly is the addition of actual reliance and proximately caused injury.

"The Consumer Fraud Act provides an injured consumer with an implied private cause of action against a violator of the act. *Sellinger v. Freeway Mobile Home Sales, Inc.,* 110 Ariz. 573, 521 P.2d 1119 (1974). The elements of a private cause of action under the act are a false promise or misrepresentation made in connection with the sale or advertisement of merchandise [or services, 44-1521(5)] and the hearer's consequent and proximate injury. *Parks v. Macro-Dynamics,* 121 Ariz. 517, 591 P.2d 1005 (App.1979). We find the record contains sufficient evidence as to each of these elements to sustain the jury's verdict on both punitive and compensatory damages." *Dunlap v. Jimmy GMC of Tucson, Inc.*, 36 Ariz. 338, 342 (App. 1983).

Intervenor Gayer has shown that the proposed treatment by APS of its "new customers" violates A.R.S. § 40-334 on discrimination, the Due Process Clause, and § 40-1522 on Consumer Fraud. Indeed, it constitutes *per se* violations of § 44-1522. Consider also the plight of a "new" APS customer, including one who has recently moved from an apartment to a single

family dwelling. He or she is no more likely to be aware of options after the 90-day period than any other "new" customer.

Therefore, the Commission should require that APS treat its "new" customers fairly in accordance with the foregoing principles, especially as to notice. Otherwise, they will be irreparably injured.

IV. AMI METERS ARE DANGEROUS DEVICES THAT EXPOSE BOTH APS AND ITS CUSTOMERS TO THE FOLLOWING UNNECESSARY RISKS

Note: For an excellent analysis of these dangerous devices that is supported by evidence, please refer to the Post-Hearing Brief of Warren Woodward, who has been studying and publishing comments on these meters for several years.

4.1 *The Risk of Cyber Attacks by Terrorists and Other Wrongdoers.*

This risk applies first to APS. If any person, a hacker, terrorist or other, is able to electronically and by radio frequency signals obtain sufficient control of a smart meter to operate its disconnect feature and cut-off the power to the house which the smart meter serves and to a large numbers of customers' houses via APS's wireless network, then the load disruption to a least one APS substation may well cause power surges, especially when APS attempts to restore power to the disconnected customers. In addition to the inconvenience of the outage, serious damage may be done to APS's expensive equipment and to electrical devices in customers' houses.

This risk also applies to any customer whose power has been disconnected. It becomes more serious when a disabled customer is depending on APS power to run a special piece of medical equipment and his backup power is limited to one hour. Without a mobile telephone, he or she is likely to be unable to seek information on the probable duration of the outage, and so will have to go to the nearest Emergency Room to be stabilized and use a telephone there.

4.2 *The Risk of House Fires Caused by Internal Meter Defects.*

Smart Meters are known to have been involved in house fires, often as their cause. Unlike analog or digital meters, smart meters have internal contacts that allow APS to remotely

disconnect a customer's power. The contacts that perform that function are often not sufficiently durable to handle the alternating currents drawn by the appliances in a customer's house. The resulting overheating causes a fire, which first destroys the service entrance panel and often spreads to the house.

Utilities tend to blame the customer's own equipment, claiming that the service entrance panel has defective contacts. But this arbitrary blame assignment puts the customer in a no-win situation. By APS's own rules and regulations, no residential customer is permitted to cause the meter to be removed from the panel, even to have a registered electrician inspect the panel's contacts that connect to the meter. So the customer is blamed for a condition that he or she cannot reasonably expected to be able to detect in advance; as a result, the customer is totally disabled from correcting any defect that may exist.

That blame becomes even more unreasonable when the fact that a reliable analog meter has served his or her house for over ten years without the slightest problem. Legally speaking, this has to be a gross denial of due process to the customer And since APS, is a public utility regulated by a governmental entity and whose tariff exists only by virtue of the Arizona Corporation Commission, principles of due process also apply to APS. See, e.g., A.R.S. section 40-334 on discrimination by a utility against its customers.

4.3 *The Danger to Customers' Health that Smart Meters Pose.*

Smart meters are a public health risk that no one should have to pay to avoid. Intervenor Gayer will leave this topic to Warren Woodward and others with more relevant and substantiated information.

4.4 *The Invasion of Privacy by APS into Private Customer Behaviors.*

If a customer has a Smart Meter, then APS is entitled to read from that meter information beyond kilowatt usage data, including data that relate to such things as TOU and Demand. But for a customer with an analog or digital meter, APS is entitled ***only*** to usage data and nothing more. APS's collection of any other data amounts to an invasion of a customer's privacy, especially when unnecessary physical intrusion onto his property is added to the unlawful

collection of personal and private data. A physical intrusion is unnecessary when an analog or digital meter can be read and has been read for years without any physical intrusion.

APS witness Bordenkircher insists that APS is permitted to intrude because its current and future tariffs and schedules do and will so authorize (639:12-23). He adds that APS needs tactile access to the meter itself so that an employee can apply an optical probe to the meter in order to read its (internal) data (640:23 to 641:2). He admits that the optical probe will gather personal information about the customer, such as demand (641:3-21). Gathering such information may be permissible under the Tariff, but no tariff can supersede the common law of privacy or the Constitutional right of privacy. There are two privacy claims: one for an unnecessary physical trespass onto his property and the other for literally stealing his private and personal information from the digital meter. These issues will be litigated by Gayer in the Justice Court.[1]

V. AZ SUN II IS A WORTHLESS PROJECT THAT WASTES CUSTOMERS' MONEY AND UNFAIRLY COMPETES WITH PRIVATE SOLAR INSTALLERS

5.1 *APS Customers Are Being Forced to Subsidize AZ Sun II.*

During Public Comment on April 24, 2017, Mr. Dru Bacon "said it all" about AZ Sun II. It will be well worth your while to read his remarks from 78:22 to 82:17, especially from 80:15 to 82:8. Mr. Bacon first opined that while APS does like solar power, it does not like it if it is owned by the homeowner. In support of his opinion, he pointed out that APS is currently installing rooftop solar on houses in his community and is paying the owners $30 per month for that. He continues that such competition by a public utility – APS – will tend to drive private solar installers out of his community. He sees this as unfair competition and contrary to American tradition. He properly concludes that "[a]nd so when APS puts solar on the roof and

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[1]These privacy issues will be litigated every month that APS insists on tactile access to his meter. He will seek up to $50 in damages, but APS will be ordered to pay that amount plus the filing fee of $1 and the process server's fee of about $65 (every month). Gayer cannot sue in advance because his cause of action accrues only upon the intrusive misconduct by APS, if any.

gives a ratepayer $30 ... that what they are doing is adding to their bottom line to where they can make more money" (82:3-7). Leland Snook agrees with Dru Bacon's conclusion: "Q. Now, is it fair to say then that essentially all of APS's money eventually comes from customers? A. Yes" (827:16-18). Snook drew that conclusion after being told that the foregoing question was a follow-up to a question asked by Mr. Sabo about the $10 to $15 Million to be spent by APS for AZ Sun II (see Sabo at 768:9-18 and Snook at 826:2-8).

5.2 *If AZ Sun II Goes Forward, Then Non-AMI Customers Should Not Be Required to Pay Any Additional Charge for Reading Their Meters.*

It is assumed under this sub-heading that Judge Jibilian now and the Commission later have essentially decided to approve APS's $5.00 monthly reading charge for non-AMI meters and is now considering the future of AZ Sun II. Gayer then submits that if the Commission decides to go forward with AZ Sun II, then non-AMI customers should not face a separate charge for reading their non-communicating meters. That would (also) amount to unlawful discrimination under ARS § 40-334.

This is based on the fact that all 1.2 million APS customers will pay 87 cents per month for AZ Sun II whereas they would pay less than 21 cents more per month for meter reading if the costs of reading non-AMI meters were spread among all 1.2 million customers. But for AZ Sun II, customers will pay significantly more than the monthly 87 cents; they will pay also for depreciation and return on rate base, plus any taxes. With a ratio of more than four to one, fairness dictates that the costs of both AZ Sun II and of reading non-AMI meters should be spread among all 1.2 million APS customers. (See Gayer's Exhibit 17.)

CONCLUSION

For the foregoing reasons, both the ROO and the Commissioner's Decision and Order should reflect the following points:

1. The Settlement Negotiations and the Resulting Settlement Agreement constitute serious violations of procedural Due Process, so that in the future there will be no such negotiations or agreements and all rate cases shall be fully litigated openly in public;

2. The costs of reading non-AMI meters shall be spread among all 1.2 million APS customers;

2.1 If the cost of reading non-AMI meters is not spread as stated in 2, above, then such customers shall be allowed to submit a self-reading of their meters to APS every month;

2.2 If the cost of reading non-AMI meters is not spread as stated in 2, then APS shall apply bill estimation to non-AMI Customers;

3. If a non-AMI meter has been read by APS in the past without entering on a customer's property (say, by using binoculars from a convenient location), then APS shall not be permitted to have physical access to that meter or its replacement for reading puposes;

4. New customers shall be allowed to choose among any rate for which they qualify when they become a new customer and shall not be required to suffer a 90-day period or any other period on a time-based rate such as TOU or TOU with Demand;

4.1 If the Commission approves the 90-day waiting period, then new customers shall be informed of their options sufficiently before the 90-days have passed so that their newly chosen rate will be effective on the date that the 90-day period expires;

5. Smart (AMI) Meters are potentially dangerous devices; APS shall not install any more or replace any of them with another AMI meter until APS by evidence establishes that AMI meters are actually safe and do not expose any customer to potentially harmful radiation, to a cyber attack that may disconnect his or her power, or to a house fire that originates inside of the meter or that involves its contacts with a customer's service entrance panel.

6. If the Commission Orders AZ Sun II to go forward, then the cost of reading non-AMI meters shall be spread among all 1.2 million APS customers. (This item is included here in the event that the ACALJ or the Commission has tentatively decided against such cost spreading when it was considered as a separate item that had not yet been related to AZ Sun II.)

Dated: 15 May 2017

Respectfully submitted by,

Richard Gayer

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Proof of Service

On 15 May 2017, I served copies of the foregoing on all parties on the "Service List" in this case.

Dated: 15 May 2017

Richard Gayer

RICHARD GAYER